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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,678	12/18/2001	David J. Yang	AH-UTXC:681US	2950
26271	7590	10/14/2004	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			FUBARA, BLESSING M	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/024,678	YANG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Blessing M. Fubara	1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5,8-22,24-45,47-68,70 and 126-128 is/are pending in the application.
- 4a) Of the above claim(s) 18-22,24-45,47-68 and 70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8-11,13-17 and 126-128 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Examiner acknowledges receipt of request for extension of time, amendment and remarks filed 06/30/04. Claims 1-3, 5, 8-22, 24-45, 47-68, 70 and 126-128 are pending.

#### ***Claim Rejections - 35 USC § 102***

1. Claims 1-3, 5, 8, 9, 13-16, 126 and 127 remain rejected under 35 U.S.C. 102(b) as being anticipated by Delmonte et al. (US 5,989,215).

Applicants argue that the prior art, though, disclosing separate containers for two solutions, does not teach separate containers for administering a polymer and a cross-linking agent. Applicants further argue that Delmonte does not teach the claims because Delmonte does not teach the additional elements of claims 13-15 and fibrin is cross-linked by Factor XIII following activation of factor XIII by calcium.

2. Applicants' arguments filed 06/30/04 have been fully considered but they are not persuasive.

Delmonte discloses a first biochemical solution that contains fibrinogen, which is a polymer; and a second biochemical solution containing thrombin and calcium salt as stated in the office action at paragraph 3. Delmonte discloses the elements of claims 13-15 because Delmonte discloses calcium chloride, which is a divalent cation salt and is also a cross-linking agent.

#### ***Claim Rejections - 35 USC § 103***

3. Claims 1-3, 8-11, 13-17, 126-128 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Fick (US 5,945,100).

Applicants argue that there is no motivation to modify the process of Fick and the

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obviousness cannot be based on "common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference." (citation, *In re Lee*).

Applicants' arguments filed 06/30 have been fully considered but they are not persuasive. The case of *In re Lee* has to do with combining references while one reference is used in the present case. And in response to applicants' argument that there is no suggestion by the prior art to keep the compositions separate and also that obviousness cannot be based on "common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference," the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, a person of ordinary skill in the relevant art would know that that once the cross-linker initiates the polymerization process. Fick is evaluated from the standpoint of the hypothetical person having ordinary skill in the art at the time the claimed invention was made. See, *Ryko Mfg. Co. v. Nu-Star Inc.*, 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991) *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1050, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988) (evidence must be viewed from position of ordinary skill, not of an expert). It is respectfully noted that as discussed in the previous Office action, hydrogel form after the polymer solution is administered to the site of treatment.

The rejection is maintained.

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4. Claims 12 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

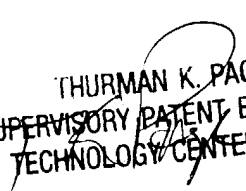
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Blessing Fubara  
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